

**BEFORE THE JUDICIAL PANEL
ON MULTIDISTRICT LITIGATION**

IN RE LAWNMOWER ENGINES
HORSEPOWER MARKETING & SALES
PRACTICES LITIGATION

MDL DOCKET NO. 1971

**REPLY OF PLAINTIFFS WILLIAM FRITZ, CARL PHILLIPS, RONNIE PHILLIPS,
MARC PARRONE AND JAMES SCHNEIDER IN FURTHER SUPPORT OF THEIR
MOTION TO TRANSFER RELATED ACTIONS TO THE DISTRICT OF NEW
JERSEY FOR COORDINATED PRETRIAL PROCEEDINGS PURSUANT TO 28 U.S.C.
§ 1407**

Plaintiffs William Fritz (D.N.J.), Carl Phillips (N.D. Cal.), and Ronnie Phillips, Marc Parrone and James Schneider (S.D. Ill.) (collectively, "Movants") respectfully submit this reply in further support of their motion for transfer of related *Lawnmower Engines Horsepower Marketing and Sales Practices* actions to the United States District Court for the District of New Jersey for consolidated pretrial proceedings. Movants submit this reply to the joint response filed by Defendants Sears, Roebuck & Co., Briggs & Stratton Corporation, Tecumseh Products Company, The Toro Company, Deere & Company, Kawasaki Motors Corp. U.S.A., The Kohler Company, Electrolux Home Products, Inc., and Husqvarna Outdoor Products Inc. ("Joint Defendants"), who favor transfer to the Southern District of Illinois ("Southern Illinois") or the Northern District of Illinois ("Northern Illinois").

Defendant MTD Products Inc supports Movants' motion for transfer to the District of New Jersey. Defendants American Honda Company, Inc. and Platinum Equity, LLC have not opposed Movants' motion and have not supported Joint Defendants' response.

I. ARGUMENT

Despite the voluminous briefing (memorandum, response, exhibits and reasons for oral argument) submitted by Joint Defendants, it remains clear that the District of New Jersey is the most sensible forum for this litigation. The District of New Jersey is the most convenient forum for this litigation and is far better positioned to facilitate the efficient management of this litigation than the Districts Joint Defendants support. There are simply no compelling reasons to transfer the related actions to any of the other candidate forums.

A. The District of New Jersey is the most experienced and has more expertise in efficiently handling complex multidistrict litigation than the Southern or Northern Districts of Illinois

The District of New Jersey has more experience and expertise in handling multidistrict litigation than Southern and Northern Illinois. The Judicial Panel on Multidistrict Litigation (the "Panel") has confidently tasked the District of New Jersey with MDLs covering a broad range of subject areas, including marketing and sales practices (such as the instant litigation), products liability, antitrust, securities fraud, patent disputes, banking and insurance issues, contracts and other substantive areas. The District of New Jersey has seventeen judgeships and no vacant judgeship months. *Judicial Caseload Profile, District of New Jersey* (attached hereto as Exhibit A). Its median time from filing to disposition of a civil case is 7.6 months, *id.*, faster than the national average of 8.6 months, *Judicial Caseload Profile, U.S. District Courts* (attached hereto as Exhibit B), faster than Southern Illinois' average of 8.5 months, *Judicial Caseload Profile, Southern District of Illinois* (attached hereto as Exhibit C) and not significantly different than

Northern Illinois' average of 6.2 months. *Judicial Caseload Profile, Northern District of Illinois* (attached hereto as Exhibit D). Further, the District of New Jersey judge assigned to this litigation—The Honorable Joel A. Pisano—has significant experience in efficiently and effectively handling complex litigation, *Memo. Supporting Plaintiffs' Mot.* at 7, but does not currently have MDL litigation before him. *Distribution of Pending MDL Dockets* at 7 (attached hereto as Exhibit E).

Conversely, Southern Illinois apparently has never handled a marketing and sales practices MDL and accordingly has no experience in doing so. It has only four judgeships and, as mentioned above, its average disposition of civil cases takes longer than both the Districts of New Jersey and Northern Illinois. *See Exhibits A, C and D.* Further, the Southern Illinois judge is currently presiding over two MDLs¹ and a motion is pending to send him a third.² Joint Defendants response proposes overwhelming his docket with a potential fourth. Southern Illinois's busy MDL docket counsels against transferring the *Lawnmower* litigation to Southern Illinois.

Northern Illinois has experience in handling marketing and sales practices MDLs, but there is no *Lawnmower* action pending there and, as explained below, the District has no special or particular experience or expertise with this or any other lawnmower or small engines horsepower litigation. Further, although Northern Illinois has twenty-two judgeships, it currently has 15.8 vacant judgeship months. *Exhibit D.* As mentioned above, its average time for disposition of civil cases is faster than Southern Illinois, but not significantly different than the average disposition time in the District of New Jersey. *See Exhibits A, C and D.* Northern

¹ The Honorable G. Patrick Murphy has pending before him *In re Profiler Products Liability Litigation*, MDL No. 1748 and *In re General Motors Corp. Dex-Cool Products Liability Litigation*, MDL No. 1562. *Exhibit E* at 4.

² Movants in *In re Aftermarket Filters Antitrust Litigation*, MDL No. 1957, have moved for transfer of the related *Filters* actions to Judge Murphy.

Illinois' lack of a *Lawnmower* action, lack of a special or particular connection to this litigation and vacant judgeship months counsel against transferring the *Lawnmower* litigation to Northern Illinois.

For these reasons, and those stated below, the most appropriate forum is the District of New Jersey.

B. Northern Illinois has no special or particular connection to the *Lawnmower* litigation

Northern Illinois has no special or particular connection to this litigation. While one Defendant is headquartered in a suburb nearby the courthouse and that Defendant's counsel are located in Northern Illinois, those facts do not take precedence over the fact that Plaintiffs are spread throughout the country and wish to coordinate their pretrial proceedings in the District of New Jersey.

Joint Defendants attempt to use the distance of the Defendants and counsel from certain forums as reasons to transfer to another "closer" forum. In reality, the distance of the parties does not differ significantly between Northern Illinois and the District of New Jersey. For example, the closest party to Northern Illinois' Chicago courthouse is Defendant Sears, which is headquartered roughly thirty-seven miles away in Hoffman Estates, Illinois. The furthest party is Movant Plaintiff Carl Phillips, who lives approximately 2,080 miles away in Vacaville, California. The distances relating to the District of New Jersey are similar. For example, the closest party to the District of New Jersey's Trenton courthouse is Movant Plaintiff William Fritz, who lives less than fourteen miles away in Princeton, New Jersey. The furthest party

opposing the District of New Jersey is Defendant Kawasaki, which is headquartered approximately 2,732 miles away in Irvine, California.³

C. The Panel has transferred sales practices litigation from both Northern and Southern Illinois to the District of New Jersey

As Joint Defendants note in their memorandum, the *Lawnmower Engines Horsepower Marketing & Sales Practices* actions arise out of litigation brought in state court as a class action that was removed to the Southern District of Illinois. Significantly, the Panel has previously transferred from both Northern and Southern Illinois to the District of New Jersey sales practices litigation with procedural posture very similar to the *Lawnmower* action. In *In re Prudential Ins. Co. America Sales Practices Litigation Agent Actions*, a class action brought in Illinois state court was removed to Southern Illinois and transferred by the Panel to the District of New Jersey. 148 F.3d 283, 292 (3d Cir. 1998) (describing the litigation's procedural history); *In re Prudential Ins. Co. of America Sales Practices Litigation*, 314 F.3d 99, 102 (3d Cir. 2002) (describing the same with regard to Northern Illinois).

The Panel has never transferred sales practices litigation from New Jersey to Northern or Southern Illinois. For these reasons, and those stated above, the most appropriate forum is the District of New Jersey.

D. The length of time a case has been pending, or the fact that a case has developed some procedural history, are not reasons to transfer related actions to a certain District

Joint Defendants argue that because a related *Lawnmower* action has been pending in Southern Illinois for approximately two years, related actions should be transferred to Southern Illinois. Such an argument is unpersuasive based upon both the facts of this litigation and the Panel's jurisprudence. For the vast majority of those two years, the parties in Southern Illinois

³ Movant Plaintiff Carl Phillips lives about 2,843 miles from the District of New Jersey's Trenton courthouse, but he supports transfer to that District. Defendant Platinum Equity is headquartered approximately 2,745 miles away in Beverly Hills, California, but it has not opposed transfer to the District of New Jersey.

have waited for the Court's ruling on Defendants' motions to dismiss. The case was removed to Southern Illinois on May 31, 2006. On August 1, 2006, Defendants moved to dismiss. On August 29, 2006, the Court heard oral argument. All litigation was stayed pending the Court's Memorandum and Order regarding the motions to dismiss. Approximately twenty-one months after the hearing, on May 8, 2008, the Court issued a Memorandum and Order dismissing RICO allegations, and without addressing the specifics of the other counts, dismissed Plaintiffs' non-Illinois state claims without prejudice. *Memo. & Order*, May 8, 2008, *Phillips v. Sears, Roebuck & Co.*, Civil No. 06-412-GPM, S.D. Ill. (attached hereto as Exhibit F). The timing of this Memorandum and Order is evidence of the Court's busy docket and two other pending MDLs.

Additionally, the Court has not made any findings on any grounds regarding the remaining claims. It is certain that Defendants will move to dismiss the operative complaint. Accordingly, this litigation is not significantly advanced in Southern Illinois more than in any other Court.

Further, the Panel has routinely transferred cases pending for extended periods of time. In *In re Excess Value Insurance Coverage Litigation*, the Southern District of New York noted that that the Panel transferred litigation filed years earlier in another court. 2004 WL 1724980, *1, No. M-21-84RMB, MDL No. 1339 (S.D.N.Y. July 30, 2004). Additionally, *Stein Jewelry Co. v. United Parcel Service, Inc.*, a case related to the *Excess Value Insurance Coverage Litigation* (see immediately previous cite), was—much like the Southern Illinois *Lawnmower* action—filed in Mississippi state court, removed to Northern District of Mississippi and transferred to the Southern District of New York fourteen months later. 228 F.Supp.2d 304, 305 (S.D.N.Y. 2002).

As noted above, the passage of time has not deterred the Panel from transferring litigation out of Southern Illinois. Nor has procedural history. *In re Managed Care Litigation*, 246

F.Supp.2d 1363, 1365-66 (J.P.M.L. 2003) (transferring a case with a pending settlement from Southern Illinois to the Southern District of Florida); *In re Mut. Funds Inv. Litigation*, 437 F.Supp.2d 439, 442 (D. Md. 2006) (Illinois state court class actions removed to the Southern District and transferred to the District of Maryland while motions to dismiss were pending). The fact that the Southern Illinois action has been pending for approximately two years and has developed some procedural history are not reasons to transfer the cases to that District, especially in light of the other factors counseling against Southern Illinois.

For these reasons, and those stated above, the most appropriate forum is the District of New Jersey.

E. Movants are complying with the Southern Illinois Court order

Joint Defendants' attempt to make much of the fact that Movants filed the first action related to the *Lawnmower* litigation in state court in southern Illinois and argue that the actions should be sent to Southern Illinois. By filing in other jurisdictions, however, Plaintiffs are doing exactly as they were told by the Southern Illinois Court. In its May 8, 2008 Order, that Court dismissed "all non-Illinois state claims . . . without prejudice to refile them *in another jurisdiction*." *Exhibit F* at 11 (emphasis added). The Court also granted Plaintiffs leave to file in Southern Illinois an "amended complaint which re-pleads *the Illinois claims only*." *Id.* at 12 (emphasis added). Given Southern Illinois' busy docket as described above, Movants seek transfer of the related actions to the District of New Jersey for coordinated pretrial proceedings because the *Lawnmower* action there has been assigned to a judge experienced in handling complex litigation who also has a docket that can accommodate an MDL. These reasons strongly counsel against transferring the *Lawnmower* actions to Southern Illinois and counsel for transferring the actions to the District of New Jersey.

II. CONCLUSION

For all of the reasons above and those in the Memorandum supporting their motion, Movants respectfully request that the Panel transfer the related *Lawnmower* actions for coordinated pretrial proceedings to the District of New Jersey and assign them to District Judge Joel A. Pisano.

Dated: July 1, 2008

Respectfully submitted,

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Exhibit A

U.S. DISTRICT COURT - JUDICIAL CASELOAD PROFILE

				12-MONTH PERIOD ENDING SEPTEMBER 30							
NEW JERSEY				2007	2006	2005	2004	2003	2002	Numerical Standing	
OVERALL CASELOAD STATISTICS	Filings*			7,699	7,275	7,539	7,567	7,270	7,555	U.S.	Circuit
	Terminations			7,752	7,480	7,605	7,373	6,998	7,125		
	Pending			6,892	6,855	6,987	6,986	6,765	6,538		
	% Change in Total Filings	Over Last Year		5.8						21	1
		Over Earlier Years				2.1	1.7	5.9	1.9	32	3
Number of Judgeships				17	17	17	17	17	17		
Vacant Judgeship Months**				.0	32.3	27.8	12.0	11.0	47.8		
ACTIONS PER JUDGESHIP	FILINGS	Total	454	428	444	446	428	445	38	3	
		Civil	392	369	387	390	370	387	23	3	
		Criminal Felony	51	51	48	46	48	49	71	3	
		Supervised Release Hearings**	11	8	9	10	10	9	82	3	
	Pending Cases		405	403	411	411	398	385	36	4	
	Weighted Filings**		496	481	493	500	486	482	31	2	
	Terminations		456	440	447	434	412	419	37	3	
	Trials Completed		13	11	10	10	10	12	72	5	
MEDIAN TIMES (months)	From Filing to Disposition	Criminal Felony	10.8	12.1	10.0	9.8	9.0	9.4	67	3	
		Civil**	7.6	8.2	7.3	7.6	7.9	8.4	24	3	
	From Filing to Trial** (Civil Only)		36.0	33.0	36.7	33.4	33.8	30.0	75	5	
OTHER	Civil Cases Over 3 Years Old**	Number	316	306	346	252	236	231			
		Percentage	5.3	5.2	5.7	4.2	4.0	4.0	56	3	
	Average Number of Felony Defendants Filed Per Case		1.2	1.2	1.3	1.2	1.2	1.2			
	Jurors	Avg. Present for Jury Selection	67.94	88.98	75.41	40.79	51.72	41.77			
		Percent Not Selected or Challenged	34.9	39.2	38.3	24.1	40.3	37.7			

2007 CIVIL AND CRIMINAL FELONY FILINGS BY NATURE OF SUIT AND OFFENSE

Type of	TOTAL	A	B	C	D	E	F	G	H	I	J	K	L
Civil	6657	205	630	1091	95	177	630	1013	710	420	924	35	727
Criminal*	846	4	258	37	109	219	46	36	9	21	32	25	50

* Filings in the "Overall Caseload Statistics" section include criminal transfers, while filings "By Nature of Offense" do not.

** See "Explanation of Selected Terms."

Exhibit B

U.S. DISTRICT COURT - JUDICIAL CASELOAD PROFILE

			12-MONTH PERIOD ENDING SEPTEMBER 30							
ALL DISTRICT COURTS			2007	2006	2005	2004	2003	2002	Numerical Standing	
OVERALL CASELOAD STATISTICS	Filings*		335,655	335,868	330,721	358,983	328,520	344,546	U.S.	Circuit
	Terminations		317,277	350,807	347,196	324,532	323,399	323,629		
	Pending		324,673	309,006	323,914	341,785	312,223	312,971		
	% Change in Total Filings	Over Last Year		-1					-	-
		Over Earlier Years			1.5	-6.5	2.2	-2.6	-	-
Number of Judgeships			678	678	678	679	680	665		
Vacant Judgeship Months**			424.7	399.3	309.2	291.4	444.8	793.4		
ACTIONS PER JUDGESHIP	FILINGS	Total	495	495	488	528	483	518	-	-
		Civil	380	383	374	414	372	413	-	-
		Criminal Felony	85	84	87	88	87	84	-	-
		Supervised Release Hearings**	30	28	27	26	24	21	-	-
	Pending Cases		479	456	478	503	459	471	-	-
	Weighted Filings**		477	464	489	529	498	504	-	-
	Terminations		468	517	512	478	476	487	-	-
	Trials Completed		20	19	19	19	19	19	-	-
MEDIAN TIMES (months)	From Filing to Disposition	Criminal Felony	7.6	7.6	7.3	6.9	6.7	6.8	-	-
		Civil**	8.6	8.3	9.5	8.5	9.3	8.7	-	-
	From Filing to Trial** (Civil Only)		24.6	23.2	22.5	22.6	22.5	21.8	-	-
OTHER	Civil Cases Over 3 Years Old**	Number	17,446	27,574	39,600	35,965	34,067	34,067		
		Percentage	6.6	11.0	14.9	12.6	13.0	12.8	-	-
	Average Number of Felony Defendants Filed Per Case		1.4	1.4	1.4	1.4	1.4	1.4		
	Jurors	Avg. Present for Jury Selection	49.32	49.61	47.36	46.33	47.81	45.54		
		Percent Not Selected or Challenged	37.3	38.1	36.7	36.8	40.0	39.3		

2007 CIVIL AND CRIMINAL FELONY FILINGS BY NATURE OF SUIT AND OFFENSE													
Type of	TOTAL	A	B	C	D	E	F	G	H	I	J	K	L
Civil	257507	12974	36469	53945	3794	5180	18674	33939	24890	10783	31756	1038	24065
Criminal*	57172	4120	11560	16593	8212	6854	1987	2446	808	1426	822	769	1575

* Filings in the "Overall Caseload Statistics" section include criminal transfers, while filings "By Nature of Offense" do not.

** See "Explanation of Selected Terms."

Exhibit C

U.S. DISTRICT COURT - JUDICIAL CASELOAD PROFILE

				12-MONTH PERIOD ENDING SEPTEMBER 30							
ILLINOIS SOUTHERN				2007	2006	2005	2004	2003	2002	Numerical Standing	
OVERALL CASELOAD STATISTICS	Filings*			1,407	1,529	1,606	1,578	1,552	3,248	U.S.	Circuit
	Terminations			1,578	1,617	1,597	1,504	1,457	3,263		
	Pending			1,266	1,429	1,515	1,500	1,417	1,332		
	% Change in Total Filings	Over Last Year			-8.0					75	5
		Over Earlier Years			-12.4	-10.8	-9.4	-56.7	93	7	
Number of Judgeships				4	4	4	4	4	4		
Vacant Judgeship Months**				.0	.0	.0	.0	.0	.0		
ACTIONS PER JUDGESHIP	FILINGS	Total	352	382	402	395	388	812	68	6	
		Civil	256	290	317	317	285	746	61	5	
		Criminal Felony	58	59	56	46	75	46	61	5	
		Supervised Release Hearings**	38	33	29	32	28	20	18	1	
	Pending Cases		317	357	379	375	354	333	64	5	
	Weighted Filings**		341	352	386	390	399	468	72	7	
	Terminations		395	404	399	376	364	816	60	4	
	Trials Completed		32	27	27	18	19	23	14	1	
MEDIAN TIMES (months)	From Filing to Disposition	Criminal Felony	9.6	9.2	10.4	8.8	6.8	7.3	61	5	
		Civil**	8.5	8.4	9.5	9.7	9.0	2.1	38	4	
	From Filing to Trial** (Civil Only)		31.5	20.0	29.3	20.0	23.0	18.0	69	6	
OTHER	Civil Cases Over 3 Years Old**	Number	79	77	74	72	67	62			
		Percentage	7.5	6.2	5.7	5.4	5.5	5.2	74	7	
	Average Number of Felony Defendants Filed Per Case		1.6	1.4	1.7	1.7	1.6	1.9			
	Jurors	Avg. Present for Jury Selection	30.11	28.00	32.32	39.83	48.95	42.13			
		Percent Not Selected or Challenged	20.3	20.9	30.0	41.8	51.1	38.6			

2007 CIVIL AND CRIMINAL FELONY FILINGS BY NATURE OF SUIT AND OFFENSE

Type of	TOTAL	A	B	C	D	E	F	G	H	I	J	K	L
Civil	1025	23	154	248	16	29	70	90	170	13	126	1	85
Criminal*	231	9	81	21	33	22	9	29	8	5	2	3	9

* Filings in the "Overall Caseload Statistics" section include criminal transfers, while filings "By Nature of Offense" do not.

** See "Explanation of Selected Terms."

Exhibit D

U.S. DISTRICT COURT - JUDICIAL CASELOAD PROFILE

				12-MONTH PERIOD ENDING SEPTEMBER 30							
ILLINOIS NORTHERN				2007	2006	2005	2004	2003	2002	Numerical Standing	
OVERALL CASELOAD STATISTICS	Filings*			8,422	8,093	9,056	10,584	11,126	11,135	U.S.	Circuit
	Terminations			7,929	8,255	8,805	11,461	10,888	10,709		
	Pending			8,091	7,711	7,914	7,706	8,699	8,587		
	% Change in Total Filings	Over Last Year		4.1					27	2	
		Over Earlier Years		-7.0	-20.4	-24.3	-24.4	81	6		
Number of Judgeships				22	22	22	22	22	22		
Vacant Judgeship Months**				15.8	5.7	12.0	9.6	22.1	17.8		
ACTIONS PER JUDGESHIP	FILINGS	Total	382	367	412	481	505	506	62	4	
		Civil	346	330	369	437	461	459	36	3	
		Criminal Felony	24	26	34	32	38	39	93	7	
		Supervised Release Hearings**	12	11	9	12	6	8	77	6	
	Pending Cases		368	351	360	350	395	390	48	3	
	Weighted Filings**		462	443	485	512	526	525	39	3	
	Terminations		360	375	400	521	495	487	66	5	
	Trials Completed		11	11	13	12	12	14	86	6	
MEDIAN TIMES (months)	From Filing to Disposition	Criminal Felony	14.7	13.9	12.9	10.3	9.9	10.3	90	7	
		Civil**	6.2	6.5	6.9	5.9	5.5	5.5	7	2	
	From Filing to Trial** (Civil Only)		29.7	26.4	27.0	28.4	26.0	26.0	65	5	
OTHER	Civil Cases Over 3 Years Old**	Number	456	500	388	337	442	461			
		Percentage	6.5	7.4	5.6	5.0	5.6	6.0	65	6	
	Average Number of Felony Defendants Filed Per Case			1.7	1.8	1.9	1.9	1.7	1.7		
	Jurors	Avg. Present for Jury Selection	45.20	45.07	51.46	39.36	45.57	43.63			
		Percent Not Selected or Challenged	31.8	30.9	36.9	31.0	37.3	34.8			

2007 CIVIL AND CRIMINAL FELONY FILINGS BY NATURE OF SUIT AND OFFENSE													
Type of	TOTAL	A	B	C	D	E	F	G	H	I	J	K	L
Civil	7620	118	150	701	53	55	1504	902	563	428	1614	23	1509
Criminal*	527	1	152	59	43	107	80	13	6	17	11	11	27

* Filings in the "Overall Caseload Statistics" section include criminal transfers, while filings "By Nature of Offense" do not.

** See "Explanation of Selected Terms."

Exhibit E

DISTRIBUTION OF PENDING MDL DOCKETS
(AS OF MARCH 10, 2008)

District	JUDGE	LITIGATION	Actions Pending	Total Number of Actions
ARE	D.J. William R. Wilson, Jr.	MDL-1507 IN RE: Prempro Products Liability Litigation	3,741	4,569
ARW	D.J. Harry F. Barnes	MDL-1832 IN RE: Pilgrim's Pride Fair Labor Standards Act Litigation	16	16
AZ	D.J. Mary H. Murguia Sr.J. Paul G. Rosenblatt	MDL-1910 IN RE: Phoenix Licensing, L.L.C., Patent Litigation MDL-1541 IN RE: Allstate Insurance Co. Fair Labor Standards Act Litigation	7 4	7 5
CAC	D.J. David O. Carter D.J. Dale S. Fischer D.J. Dale S. Fischer D.J. R. Gary Klausner D.J. R. Gary Klausner D.J. S. James Otero Sr.J. Mariana R. Pfaelzer D.J. Manuel L. Real D.J. Christina A. Snyder D.J. Christina A. Snyder C.J. Alicemarie H. Stotler D.J. Stephen V. Wilson	MDL-1807 IN RE: Wachovia Securities, LLC, Wage and Hour Litigation MDL-1822 IN RE: Bluetooth Headset Products Liability Litigation MDL-1897 IN RE: Mattel, Inc., Toy Lead Paint Products Liability Litigation MDL-1816 IN RE: Katz Interactive Call Processing Patent Litigation MDL-1864 IN RE: Charlotte Russe, Inc., Fair and Accurate Credit Transactions Act (FACTA) Litigation MDL-1891 IN RE: Korean Air Lines Co., Ltd., Antitrust Litigation MDL-1574 IN RE: Paxil Products Liability Litigation MDL-1737 IN RE: American Honda Motor Co., Inc., Oil Filter Products Liability Litigation MDL-1671 IN RE: Reformulated Gasoline (RFG) Antitrust & Patent Litigation MDL-1825 IN RE: Midland National Life Insurance Co. Annuity Sales Practices Litigation MDL-1803 IN RE: Banc of America Investment Services, Inc., Overtime Pay Litigation MDL-1745 IN RE: Live Concert Antitrust Litigation	17 27 20 53 3 70 6 5 9 2 5 22	20 27 20 54 3 70 149 5 12 2 5 22

District	Judge	Litigation	Assigned Pending Actions	Final Number of Actions
CAN	D.J. William H. Alsup	MDL-1826 IN RE: Graphics Processing Units Antitrust Litigation	51	52
	D.J. Sandra Brown Armstrong	MDL-1781 IN RE: Cintas Corp. Overtime Pay Arbitration Litigation	71	71
	D.J. Sandra Brown Armstrong	MDL-1809 IN RE: Terminix Employment Practices Litigation	2	2
	D.J. Charles R. Breyer	MDL-1699 IN RE: Bextra and Celebrex Marketing, Sales Practices and Products Liability Litigation	1,753	2,017
	D.J. Charles R. Breyer	MDL-1793 IN RE: International Air Transportation Surcharge Antitrust Litigation	101	102
	D.J. Charles R. Breyer	MDL-1913 IN RE: Transpacific Passenger Air Transportation Antitrust Litigation	16	16
	Sr.J. Samuel Conti	MDL-1917 IN RE: Cathode Ray Tube (CRT) Antitrust Litigation	15	15
	D.J. Phyllis J. Hamilton	MDL-1486 IN RE: Dynamic Random Access Memory (DRAM) Antitrust Litigation	26	45
	D.J. Susan Y. Illston	MDL-1827 IN RE: TFT-LCD (Flat Panel) Antitrust Litigation	135	135
	D.J. Martin J. Jenkins	MDL-1648 IN RE: Rubber Chemicals Antitrust Litigation	10	14
	D.J. Marilyn Hall Patel	MDL-1770 IN RE: Wells Fargo Home Mortgage Overtime Pay Litigation	4	4
	D.J. Marilyn Hall Patel	MDL-1841 IN RE: Wells Fargo Loan Processor Overtime Pay Litigation	2	2
	C.J. Vaughn R. Walker	MDL-1606 IN RE: Deep Vein Thrombosis Litigation	5	84
	C.J. Vaughn R. Walker	MDL-1791 IN RE: National Security Agency Telecommunications Records Litigation	48	49
	D.J. James Ware	MDL-1665 IN RE: Acacia Media Technologies Corp. Patent Litigation	22	23
	D.J. Claudia Wilken	MDL-1819 IN RE: Static Random Access Memory (SRAM) Antitrust Litigation	81	82
	D.J. Ronald M. Whyte	MDL-1423 IN RE: Cygnus Telecommunications Technology, LLC, Patent Litigation	3	30
	D.J. Ronald M. Whyte	MDL-1754 IN RE: Apple iPod nano Products Liability Litigation	5	8
CAS	D.J. Roger T. Benitez	MDL-1806 IN RE: Morgan Stanley & Co., Inc., Overtime Pay Litigation (No. II)	11	11
	D.J. Roger T. Benitez	MDL-1889 IN RE: Peregrine Systems, Inc., Securities Litigation	35	35
	Sr.J. Napoleon A. Jones, Jr.	MDL-1296 IN RE: Alliance Equipment Lease Program Securities Litigation	1	27
	D.J. Jeffrey T. Miller	MDL-1751 IN RE: Jamster Marketing Litigation	5	5
CO	D.J. Robert E. Blackburn	MDL-1788 IN RE: Qwest Communications International, Inc., Securities & "ERISA" Litigation (No. II)	8	30
	D.J. Wiley Y. Daniel	MDL-1743 IN RE: American Family Mutual Insurance Co. Overtime Pay Litigation	2	2
CT	Sr.J. Alfred V. Covello	MDL-1568 IN RE: Parcel Tanker Shipping Services Antitrust Litigation	2	18
	D.J. Christopher F. Droney	MDL-1894 IN RE: U.S. Foodservice, Inc., Pricing Litigation	3	3
	D.J. Alvin W. Thompson	MDL-1463 IN RE: Xerox Corp. Securities Litigation	22	22
	D.J. Stefan R. Underhill	MDL-1542 IN RE: Ethylene Propylene Diene Monomer (EPDM) Antitrust Litigation	15	15
	D.J. Stefan R. Underhill	MDL-1631 IN RE: Publication Paper Antitrust Litigation	28	31
	D.J. Stefan R. Underhill	MDL-1642 IN RE: Polychloroprene Rubber (CR) Antitrust Litigation	9	9
	D.J. Stefan R. Underhill	MDL-1649 IN RE: Helicopter Crash Near Wendle Creek, British Columbia, on August 8, 2002	4	4

District	Judge	Litigation	Number of Parallel Actions	Number of Actions
DC	D.J. John D. Bates	MDL-1772 IN RE: Series 7 Broker Qualification Exam Scoring Litigation	19	21
	D.J. Rosemary M. Collyer	MDL-1880 IN RE: Papst Licensing Digital Camera Patent Litigation	6	6
	D.J. Paul L. Friedman	MDL-1869 IN RE: Rail Freight Fuel Surcharge Antitrust Litigation	16	16
	C.J. Thomas F. Hogan	MDL-1285 IN RE: Vitamin Antitrust Litigation	3	84
	D.J. Ellen Segal Huvelle	MDL-1792 IN RE: InPhonic, Inc., Wireless Phone Rebate Litigation	15	15
	D.J. Royce C. Lamberth	MDL-1307 IN RE: Columbia/HCA Healthcare Corp. Qui Tam Litigation (No. II)	2	30
	D.J. Richard J. Leon	MDL-1515 IN RE: Nifedipine Antitrust Litigation	6	10
	D.J. Richard J. Leon	MDL-1668 IN RE: Federal National Mortgage Association Securities, Derivative & "ERISA" Litigation	7	18
	D.J. James Robertson	MDL-1796 IN RE: Department of Veterans Affairs (VA) Data Theft Litigation	3	3
	D.J. Ricardo M. Urbina	MDL-1798 IN RE: Long-Distance Telephone Service Federal Excise Tax Refund Litigation	4	4
DE	D.J. Joseph J. Farnan, Jr.	MDL-1717 IN RE: Intel Corp. Microprocessor Antitrust Litigation	76	77
	C.J. Gregory M. Sleet	MDL-1660 IN RE: PharmaStem Therapeutics, Inc., Patent Litigation	6	6
	C.J. Gregory M. Sleet	MDL-1848 IN RE: Rembrandt Technologies, LP, Patent Litigation	15	15
	C.J. Gregory M. Sleet	MDL-1866 IN RE: Brimonidine Patent Litigation	2	2
FLM	D.J. Henry Lee Adams, Jr.	MDL-1698 IN RE: American General Life & Accident Insurance Co. Retiree Benefits "ERISA" Litigation	80	80
	D.J. Anne C. Conway	MDL-1769 IN RE: Seroquel Products Liability Litigation	5,645	7,292
	D.J. Timothy J. Corrigan	MDL-1828 IN RE: Imagitas, Inc., Drivers' Privacy Protection Act Litigation	13	13
	Sr.J. Paul A. Magnuson (MN)	MDL-1824 IN RE: Tri-State Water Rights Litigation	6	6
	D.J. James S. Moody, Jr.	MDL-1626 IN RE: Accutane Products Liability Litigation	17	32
FLS	D.J. Donald L. Graham	MDL-1888 IN RE: Marine Hose Antitrust Litigation (No. II)	8	8
	D.J. Kenneth A. Marra	MDL-1916 IN RE: Chiquita Brands International, Inc., Alien Tort Statute and Shareholders Derivative Litigation	6	6
GAM	C.J. Federico A. Moreno	MDL-1334 IN RE: Managed Care Litigation	9	124
	D.J. Clay D. Land	MDL-1854 IN RE: Tyson Foods, Inc., Fair Labor Standards Act Litigation	25	25
GAN	D.J. William S. Duffey, Jr.	MDL-1895 IN RE: LTL Shipping Services Antitrust Litigation	50	50
	D.J. Thomas W. Thrash, Jr.	MDL-1804 IN RE: Stand 'n Seal Products Liability Litigation	35	36
	D.J. Thomas W. Thrash, Jr.	MDL-1845 IN RE: ConAgra Peanut Butter Products Liability Litigation	147	147
IAS	Sr.J. Ronald E. Longstaff	MDL-1733 IN RE: Teflon Products Liability Litigation	23	23

District	Judge	Litigation	Actual Number of Judgments Entered	Total Number of Actions
ILN	D.J. Wayne R. Andersen Sr.J. Marvin E. Aspen Sr.J. Marvin E. Aspen D.J. Elaine E. Bucklo D.J. David H. Coar D.J. David H. Coar D.J. Robert W. Gettleman Sr.J. John F. Grady Sr.J. John F. Grady Sr.J. John F. Grady C.J. James F. Holderman, Jr. Sr.J. Harry D. Leinenweber D.J. Charles R. Norgle, Sr. D.J. Charles R. Norgle, Sr. D.J. Amy J. St. Eve D.J. James B. Zagel D.J. James B. Zagel	MDL-1876 IN RE: Long Beach Mortgage Company Truth in Lending Act 1-4 Family Rider Litigation MDL-1425 IN RE: Aimster Copyright Litigation MDL-1715 IN RE: Ameritrust Mortgage Co. Mortgage Lending Practices Litigation MDL-1784 IN RE: McDonald's French Fries Litigation MDL-1536 IN RE: Sulfuric Acid Antitrust Litigation MDL-1783 IN RE: JP Morgan Chase & Co. Securities Litigation MDL-1350 IN RE: Trans Union Corp. Privacy Litigation MDL-986 IN RE: "Factor VIII or IX Concentrate Blood Products" Products Liability Litigation MDL-1521 IN RE: Wireless Telephone 911 Calls Litigation MDL-1703 IN RE: Sears, Roebuck & Co. Tools Marketing and Sales Practices Litigation MDL-1818 IN RE: Citifinancial Services Incorporated Prescreened Offer Litigation MDL-1893 IN RE: RC2 Corp. Toy Lead Paint Products Liability Litigation MDL-1491 IN RE: African-American Slave Descendants Litigation MDL-1604 IN RE: Ocwen Federal Bank FSB Mortgage Servicing Litigation MDL-1778 IN RE: Ocean Financial Corp. Prescreening Litigation MDL-899 IN RE: Mortgage Escrow Deposit Litigation MDL-1392 IN RE: General Motors Corporation Vehicle Paint Litigation (No. III)	3 11 447 13 7 3 14 115 10 4 10 18 2 75 1 2	3 11 457 14 7 3 15 367 10 7 10 18 10 90 6 75 3
ILS	D.J. G. Patrick Murphy D.J. G. Patrick Murphy	MDL-1562 IN RE: General Motors Corp. Dex-Cool Products Liability Litigation MDL-1748 IN RE: Profiler Products Liability Litigation	6 4	12 4
INN	Sr.J. Rudy J. Lozano C.J. Robert L. Miller, Jr.	MDL-1767 IN RE: H&R Block Mortgage Corp. Prescreening Litigation MDL-1700 IN RE: FedEx Ground Package System, Inc., Employment Practices Litigation (No. II)	3 57	3 63
INS	D.J. Sarah E. Barker C.J. David F. Hamilton D.J. Larry J. McKinney	MDL-1373 IN RE: Bridgestone/Firestone, Inc., Tires Products Liability Litigation MDL-1313 IN RE: AT&T Corp. Fiber Optic Cable Installation Litigation MDL-1727 IN RE: COBRA Tax Shelters Litigation	15 43 3	824 43 4
KS	D.J. John W. Lungstrum D.J. John W. Lungstrum C.J. Kathryn H. Vratil C.J. Kathryn H. Vratil C.J. Kathryn H. Vratil	MDL-1468 IN RE: Universal Service Fund Telephone Billing Practices Litigation MDL-1616 IN RE: Urethane Antitrust Litigation MDL-1721 IN RE: Cessna 208 Series Aircraft Products Liability Litigation MDL-1840 IN RE: Motor Fuel Temperature Sales Practices Litigation MDL-1853 IN RE: The TJX Companies, Inc., Fair and Accurate Credit Transactions Act (FACTA) Litigation	63 30 8 50 9	68 30 9 50 9
KYE	Sr.J. Joseph M. Hood	MDL-1877 IN RE: ClassicStar Mare Lease Litigation	18	18

Dispute	JUDGE	LITIGATION	Adverse Public Number of Actions	Total Number of Actions
LAE	D.J. Kurt D. Engelhardt	MDL-1873 IN RE: FEMA Trailer Formaldehyde Products Liability Litigation	15	15
	D.J. Eldon E. Fallon	MDL-1355 IN RE: Propulsid Products Liability Litigation	297	474
	D.J. Eldon E. Fallon	MDL-1657 IN RE: Vioxx Marketing, Sales Practices and Products Liability Litigation	9,284	9,882
	D.J. Martin L.C. Feldman	MDL-1390 IN RE: Life Insurance Co. of Georgia Industrial Life Insurance Litigation	52	133
	D.J. Sarah S. Vance	MDL-1643 IN RE: Educational Testing Service PLT 7-12 Test Scoring Litigation	2	31
MA	D.J. Nancy Gertner	MDL-1354 IN RE: Citigroup, Inc., Capital Accumulation Plan Litigation	8	18
	Sr.J. Edward F. Harrington	MDL-1143 IN RE: Mutual Life Insurance Company of New York Premium Litigation	2	23
	D.J. Patti B. Saris	MDL-1456 IN RE: Pharmaceutical Industry Average Wholesale Price Litigation	3	119
	D.J. Patti B. Saris	MDL-1629 IN RE: Neurontin Marketing, Sales Practices and Products Liability Litigation	10	231
	D.J. Richard G. Stearns	MDL-1861 IN RE: Wellnx Marketing and Sales Practices Litigation	16	16
	D.J. Joseph L. Tauro	MDL-1790 IN RE: Volkswagen and Audi Warranty Extension Litigation	2	8
	D.J. Joseph L. Tauro	MDL-1820 IN RE: Webloyalty.com, Inc., Marketing and Sales Practices Litigation	2	5
	D.J. Joseph L. Tauro	MDL-1870 IN RE: Greenwood Credit Union Prescreening Litigation	3	3
	D.J. Douglas P. Woodlock	MDL-1543 IN RE: Carbon Black Antitrust Litigation	1	16
	D.J. Douglas P. Woodlock	MDL-1704 IN RE: M3Power Razor System Marketing & Sales Practices Litigation	1	26
	D.J. William G. Young	MDL-1838 IN RE: The TJX Companies, Inc., Customer Data Security Breach Litigation	28	28
	D.J. Rya W. Zobel	MDL-1380 IN RE: Xcelera.com Inc. Securities Litigation	1	20
	D.J. Rya W. Zobel	MDL-1461 IN RE: Shell Oil Products Co. Dealer Franchise Litigation	1	3
MD	D.J. Catherine C. Blake	MDL-1539 IN RE: Royal Ahold N.V. Securities & "ERISA" Litigation	37	37
	C.J. Benson Everett Legg	MDL-1387 IN RE: ProteGen Sling and Vesica System Products Liability Litigation	4	584
ME	D.J. J. Frederick Motz	MDL-1332 IN RE: Microsoft Corp. Windows Operating Systems Antitrust Litigation	2	117
	D.J. J. Frederick Motz,	MDL-1586 IN RE: Mutual Funds Investment Litigation	423	437
	D.J. Andre M. Davis and			
	D.J. Catherine C. Blake	MDL-1911 IN RE: Michelin North America, Inc., PAX System Marketing and Sales Practices Litigation	4	4
	D.J. Roger W. Titus			
MIE	D.J. D. Brock Hornby	MDL-1532 IN RE: New Motor Vehicles Canadian Export Antitrust Litigation	27	31
MIW	D.J. Sean F. Cox	MDL-1867 IN RE: OnStar Contract Litigation	22	23
	C.J. Bernard A. Friedman	MDL-1718 IN RE: Ford Motor Co. Speed Control Deactivation Switch Products Liability Litigation	78	81
	D.J. Gerald E. Rosen	MDL-1725 IN RE: Delphi Corp. Securities, Derivative & "ERISA" Litigation	22	25
	D.J. Gerald E. Rosen	MDL-1749 IN RE: General Motors Corp. Securities & Derivative Litigation	5	5
MIW	C.J. Robert Holmes Bell	MDL-1846 IN RE: Trade Partners, Inc., Investors Litigation	5	5

Plaintiff	JUDGE	LITIGATION	Actions Pending	Total Actions
MN	D.J. Michael J. Davis Sr.J. David S. Doty D.J. Donovan W. Frank Sr.J. Richard H. Kyle Sr.J. Paul A. Magnuson C.J. James M. Rosenbaum C.J. James M. Rosenbaum D.J. John R. Tunheim	MDL-1431 IN RE: Baycol Products Liability Litigation MDL-1892 IN RE: KFC Corp. Fair Labor Standards Act Litigation MDL-1708 IN RE: Guidant Corp. Implantable Defibrillators Products Liability Litigation MDL-1905 IN RE: Medtronic, Inc., Sprint Fidelis Leads Products Liability Litigation MDL-1724 IN RE: Viagra Products Liability Litigation MDL-1726 IN RE: Medtronic, Inc., Implantable Defibrillators Products Liability Litigation MDL-1836 IN RE: Mirapex Products Liability Litigation MDL-1396 IN RE: St. Jude Medical, Inc., Silzone Heart Valves Products Liability Litigation	330 27 2,056 31 134 1,115 275 20	9,090 28 2,086 31 140 1,191 275 57
MOE	D.J. Jean C. Hamilton Sr.J. Stephen N. Limbaugh D.J. Catherine D. Perry D.J. Rodney W. Sippel D.J. Rodney W. Sippel D.J. E. Richard Webber	MDL-1702 IN RE: Air Crash Near Kirksville, Missouri, on October 19, 2004 MDL-1672 IN RE: Express Scripts, Inc., Pharmacy Benefits Management Litigation MDL-1811 IN RE: Genetically Modified Rice Litigation MDL-1620 IN RE: Metoprolol Succinate Patent Litigation MDL-1736 IN RE: Celexa and Lexapro Products Liability Litigation MDL-1907 IN RE: Aurora Dairy Corp. Organic Milk Marketing and Sales Practices Litigation	4 13 222 8 43 4	12 20 222 8 43 4
MOW	D.J. Richard E. Dorr	MDL-1786 IN RE: H&R Block, Inc., Express IRA Marketing Litigation	20	21
MSS	D.J. Keith Starrett	MDL-1872 IN RE: Wayne Farms LLC Fair Labor Standards Act Litigation	12	12
NCM	C.J. James A. Beaty, Jr.	MDL-1622 IN RE: Cotton Yarn Antitrust Litigation	9	9
NCW	C.J. Richard L. Voorhees	MDL-1516 IN RE: Polyester Staple Antitrust Litigation	14	36
NE	D.J. Laurie Smith Camp	MDL-1920 IN RE: Saturn L-Series Timing Chain Products Liability Litigation	3	3
NH	D.J. Paul J. Barbadoro	MDL-1335 IN RE: Tyco International, Ltd., Securities, Derivative and "ERISA" Litigation	12	104

JUDGE	JUDGE	LITIGATION	Actual Number of Settlements Reached	Pool Number of Actions
NJ	Sr.J. Harold A. Ackerman C.J. Garrett E. Brown, Jr. C.J. Garrett E. Brown, Jr. D.J. Stanley R. Chesler D.J. Stanley R. Chesler D.J. Stanley R. Chesler D.J. Mary L. Cooper Sr.J. Dickinson R. Debevoise Sr.J. Dickinson R. Debevoise D.J. Joseph A. Greenaway, Jr. D.J. Noel L. Hillman D.J. Faith S. Hochberg D.J. Faith S. Hochberg Sr.J. Joseph E. Irenas D.J. Jose L. Linares D.J. William J. Martini D.J. Jerome B. Simandle Sr.J. William H. Walls D.J. Susan D. Wigenton D.J. Freda L. Wolfson D.J. Freda L. Wolfson	MDL-1687 IN RE: Ford Motor Co. E-350 Van Products Liability Litigation (No. II) MDL-1471 IN RE: Compensation of Managerial, Professional and Technical Employees Antitrust Litigation MDL-1663 IN RE: Insurance Brokerage Antitrust Litigation MDL-1658 IN RE: Merck & Co., Inc., Securities, Derivative & "ERISA" Litigation MDL-1777 IN RE: SFBC International, Inc., Securities & Derivative Litigation MDL-1857 IN RE: Schering Marketing and Sales Practices Litigation (No. II) MDL-1851 IN RE: Desloratadine Patent Litigation MDL-1337 IN RE: Holocaust Era German Industry, Bank & Insurance Litigation MDL-1914 IN RE: Mercedes-Benz Tele Aid Contract Litigation MDL-1419 IN RE: K-Dur Antitrust Litigation MDL-1850 IN RE: Pet Food Products Liability Litigation MDL-1384 IN RE: Gapabentin Patent Litigation MDL-1479 IN RE: Neurontin Antitrust Litigation MDL-1881 IN RE: Boscov's Department Store, LLC, Fair and Accurate Credit Transactions Act (FACTA) Litigation MDL-1730 IN RE: Hypodermic Products Antitrust Litigation MDL-1763 IN RE: Human Tissue Products Liability Litigation MDL-1514 IN RE: Electrical Carbon Products Antitrust Litigation MDL-1292 IN RE: Cendant Corporation Securities Litigation MDL-1550 IN RE: IDT Corp. Calling Card Terms Litigation MDL-1799 IN RE: Vonage Initial Public Offering (IPO) Securities Litigation MDL-1862 IN RE: Vonage Marketing and Sales Practices Litigation MDL-1619 IN RE: Musha Cay Litigation MDL-1357 IN RE: NOS Communications, Inc., Billing Practices Litigation MDL-1878 IN RE: Internal Revenue Service §1031 Tax Deferred Exchange Litigation MDL-1566 IN RE: Western States Wholesale Natural Gas Antitrust Litigation MDL-1735 IN RE: Wal-Mart Wage and Hour Employment Practices Litigation	5 4 45 1 1 6 4 2 4 1 116 13 22 3 9 208 1 3 4 1 5 3 7 5 6 33	5 4 47 35 14 6 4 59 4 44 116 17 22 3 10 216 25 18 5 16 5 3 8 5 33 35
NV	D.J. Kent J. Dawson Sr.J. Lloyd D. George D.J. Robert Clive Jones D.J. Philip M. Pro D.J. Philip M. Pro		3 7 5 6 33	3 8 5 33 35

Plaintiff	JUDGE	LITIGATION	Actions Pending	Total Number of Actions
NYE	D.J. Brian M. Cogan C.J. Raymond J. Dearie D.J. John Gleeson D.J. John Gleeson D.J. John Gleeson Sr. J. Thomas C. Platt, Jr. Sr. J. Thomas C. Platt, Jr. Sr. J. David G. Trager Sr. J. Jack B. Weinstein Sr. J. Jack B. Weinstein	MDL-1844 IN RE: Air Crash Near Peixoto de Azevedo, Brazil, on September 29, 2006 MDL-1613 IN RE: Nigeria Charter Flights Contract Litigation MDL-1575 IN RE: Visa/MasterCard Antitrust Litigation MDL-1720 IN RE: Payment Card Interchange Fee and Merchant Discount Antitrust Litigation MDL-1775 IN RE: Air Cargo Shipping Services Antitrust Litigation MDL-799 IN RE: Air Disaster at Lockerbie, Scotland, on December 21, 1988 MDL-1898 IN RE: American Home Mortgage Securities Litigation MDL-1738 IN RE: Vitamin C Antitrust Litigation MDL-381 IN RE: "Agent Orange" Products Liability Litigation MDL-1596 IN RE: Zyprexa Products Liability Litigation	68 10 5 51 94 37 19 10 6 1,866	68 14 8 51 95 297 19 10 629 1,869
NYS	Sr. J. Harold Baer, Jr. D.J. Deborah A. Batts D.J. Richard A. Berman D.J. Charles L. Brient D.J. Charles L. Brient D.J. Denise Cote D.J. Paul A. Crotty D.J. George B. Daniels D.J. George B. Daniels Sr. J. Kevin Thomas Duffy Sr. J. Thomas P. Griesa Sr. J. Thomas P. Griesa D.J. Richard J. Holwell D.J. Barbara S. Jones D.J. Lewis A. Kaplan D.J. Lewis A. Kaplan Sr. J. John F. Keenan Sr. J. John F. Keenan Sr. J. Shirley Wohl Kram Sr. J. Shirley Wohl Kram Sr. J. Shirley Wohl Kram D.J. Gerard E. Lynch D.J. Gerard E. Lynch Sr. J. Lawrence M. McKenna	MDL-1661 IN RE: Rivastigmine Patent Litigation MDL-1714 IN RE: Rhodia S.A. Securities Litigation MDL-1628 IN RE: Pineapple Antitrust Litigation MDL-1508 IN RE: Medco Health Solutions, Inc., Pharmacy Benefits Management Litigation MDL-1903 IN RE: PepsiCo, Inc., Bottled Water Marketing and Sales Practices Litigation MDL-1487 IN RE: WorldCom, Inc., Securities & "ERISA" Litigation MDL-1794 IN RE: Novartis Wage and Hour Litigation MDL-1379 IN RE: Literary Works in Electronic Databases Copyright Litigation MDL-1570 IN RE: Terrorist Attacks on September 11, 2001 MDL-1443 IN RE: America Online, Inc., Community Leaders Litigation MDL-1336 IN RE: Abercrombie & Fitch Co. Securities Litigation MDL-1644 IN RE: Elevator and Escalator Antitrust Litigation MDL-1771 IN RE: "A Million Little Pieces" Litigation MDL-1291 IN RE: Omeprazole Patent Litigation MDL-1348 IN RE: Rezulin Products Liability Litigation MDL-1653 IN RE: Parmalat Securities Litigation MDL-1484 IN RE: Merrill Lynch & Co., Inc., Research Reports Securities Litigation MDL-1789 IN RE: Fosamax Products Liability Litigation MDL-1500 IN RE: AOL Time Warner Inc. Securities & "ERISA" Litigation MDL-1739 IN RE: Grand Theft Auto Video Game Consumer Litigation (No. II) MDL-1744 IN RE: Marsh & McLennan Companies, Inc., Securities Litigation MDL-1472 IN RE: Global Crossing Ltd. Securities and "ERISA" Litigation MDL-1902 IN RE: Refco Inc. Securities Litigation MDL-1529 IN RE: Adelphia Communications Corp. Securities & Derivative Litigation (No. II)	4 4 6 5 4 3 2 3 24 3 20 4 11 5 751 17 21 412 35 8 7 2 13 72	5 4 10 18 4 177 2 5 25 3 20 25 11 22 1,868 17 176 413 72 8 10 89 13 72

District	JUDGE	LITIGATION	Actions Pending Number	Final Actions
NYS (cont.)	D.J. Colleen McMahon	MDL-1695 IN RE: Veeco Instruments Inc. Securities Litigation	13	13
	D.J. Colleen McMahon	MDL-1755 IN RE: Bayou Hedge Funds Investment Litigation	9	10
	Sr.J. Richard Owen	MDL-1688 IN RE: Pfizer Inc. Securities, Derivative & "ERISA" Litigation	30	30
	Sr.J. Richard Owen	MDL-1706 IN RE: Doral Financial Corp. Securities Litigation	24	25
	D.J. William H. Pauley III	MDL-1409 IN RE: Currency Conversion Fee Antitrust Litigation	5	35
	D.J. Loretta A. Preska	MDL-1659 IN RE: Nortel Networks Corp. Securities Litigation	2	30
	D.J. Loretta A. Preska	MDL-1780 IN RE: Digital Music Antitrust Litigation	30	31
	D.J. Jed S. Rakoff	MDL-1598 IN RE: Ephedra Products Liability Litigation	519	861
	D.J. Shira Ann Scheindlin	MDL-1358 IN RE: Methyl Tertiary Butyl Ether ("MTBE") Products Liability Litigation	145	167
	D.J. Shira Ann Scheindlin	MDL-1428 IN RE: Ski Train Fire in Kaprun, Austria, on November 11, 2000	8	27
	D.J. Shira Ann Scheindlin	MDL-1554 IN RE: Initial Public Offering (IPO) Securities Litigation	393	511
	Sr.J. John E. Sprizzo	MDL-1153 IN RE: Bennett Funding Group, Inc., Securities Litigation (No. II)	29	66
	Sr.J. John E. Sprizzo	MDL-1499 IN RE: South African Apartheid Litigation	13	14
	Sr.J. John E. Sprizzo	MDL-1584 IN RE: Federal Home Loan Mortgage Corp. Securities & Derivative Litigation (No. II)	1	8
	D.J. Sidney H. Stein	MDL-1603 IN RE: OxyContin Antitrust Litigation	59	63
	Sr.J. Robert W. Sweet and Sr.J. John F. Keenan*	MDL-1448 IN RE: Air Crash at Belle Harbor, New York, on November 12, 2001	52	376
* Judge Keenan is assigned to actions in which Judge Sweet is recused.				
OHN	D.J. Peter C. Economus	MDL-1561 IN RE: Travel Agent Commission Antitrust Litigation	1	3
	Sr.J. David A. Katz	MDL-1742 IN RE: Ortho Evra Products Liability Litigation	1,040	1,179
	D.J. Donald C. Nugent	MDL-1488 IN RE: Ford Motor Co. Panther Platform/Fuel Tank Design Products Liability Litigation	3	31
	D.J. Kathleen McDonald O'Malley	MDL-1401 IN RE: Sulzer Orthopedics Inc. Hip Prosthesis and Knee Prosthesis Products Liability Litigation	3	434
	D.J. Kathleen McDonald O'Malley	MDL-1490 IN RE: Commercial Money Center, Inc., Equipment Lease Litigation	31	38
	D.J. Kathleen McDonald O'Malley	MDL-1535 IN RE: Welding Fume Products Liability Litigation	3,299	11,569
OHS	D.J. Dan A. Polster	MDL-1909 IN RE: Gadolinium Contrast Dyes Products Liability Litigation	25	25
	D.J. Gregory L. Frost	MDL-1638 IN RE: Foundry Resins Antitrust Litigation	1	20
OKW	Sr.J. James L. Graham	MDL-1565 IN RE: National Century Financial Enterprises, Inc., Investment Litigation	21	22
	Sr.J. James L. Graham	MDL-1829 IN RE: Vision Service Plan Tax Litigation	5	5
OR	D.J. Stephen P. Friot	MDL-1564 IN RE: Farmers Insurance Co., Inc., FCRA Litigation	7	12
	Sr.J. Robert E. Jones	MDL-1439 IN RE: Farmers Insurance Exchange Claims Representatives' Overtime Pay Litigation	4	13

District	Judge	Litigation	Total Number of Pending Actions	Total Number of Actions
PAE	C.J. Harvey Bartle III D.J. Ronald L. Buckwalter D.J. Ronald L. Buckwalter D.J. Stewart Dalzell D.J. Legrome D. Davis Sr.J. Jan E. DuBois Sr.J. John P. Fullam Sr.J. James T. Giles Sr.J. Bruce W. Kauffman D.J. Mary A. McLaughlin Sr.J. Thomas N. O'Neill, Jr. Sr.J. Louis H. Pollak D.J. Cynthia M. Rufe D.J. Timothy J. Savage D.J. Timothy J. Savage D.J. Lawrence F. Stengel D.J. Richard Barclay Surrick D.J. Richard Barclay Surrick	MDL-1203 IN RE: Diet Drugs (Phentermine/Fenfluramine/Dexfenfluramine) Products Liability Litigation MDL-1014 IN RE: Orthopedic Bone Screw Products Liability Litigation MDL-1741 IN RE: Isolagen, Inc., Securities & Derivative Litigation MDL-1682 IN RE: Hydrogen Peroxide Antitrust Litigation MDL-1684 IN RE: Plastics Additives Antitrust Litigation (No. II) MDL-1261 IN RE: Linerboard Antitrust Litigation MDL-1782 IN RE: Pharmacy Benefit Managers Antitrust Litigation MDL-875 IN RE: Asbestos Products Liability Litigation (No. VI) MDL-969 IN RE: Unisys Corp. Retiree Medical Benefit "ERISA" Litigation MDL-1712 IN RE: American Investors Life Insurance Co. Annuity Marketing and Sales Practices Litigation MDL-1904 IN RE: OSI Restaurant Partners, LLC, Fair and Accurate Credit Transactions Act (FACTA) Litigation MDL-1817 IN RE: CertainTeed Corp. Roofing Shingle Products Liability Litigation MDL-1871 IN RE: Avandia Marketing, Sales Practices and Products Liability Litigation MDL-1675 IN RE: ACE Limited Securities Litigation MDL-1768 IN RE: Methyl Methacrylate (MMA) Antitrust Litigation MDL-1879 IN RE: Sterling Financial Corporation Securities Litigation MDL-1426 IN RE: Automotive Refinishing Paint Antitrust Litigation MDL-1912 IN RE: Fasteners Antitrust Litigation MDL-1556 IN RE: Pressure Sensitive Labelstock Antitrust Litigation MDL-1674 IN RE: Community Bank of Northern Virginia Mortgage Lending Practices Litigation MDL-1842 IN RE: Kugel Mesh Hernia Patch Products Liability Litigation MDL-1865 IN RE: Household Goods Movers Antitrust Litigation MDL-1785 IN RE: Bausch & Lomb Inc. Contact Lens Solution Products Liability Litigation MDL-1552 IN RE: UnumProvident Corp. Securities, Derivative & "ERISA" Litigation MDL-1899 IN RE: Southeastern Milk Antitrust Litigation MDL-1760 IN RE: Aredia and Zometra Products Liability Litigation MDL-1537 IN RE: Nortel Networks Corp. "ERISA" Litigation MDL-1457 IN RE: Allstate Insurance Co. Underwriting and Rating Practices Litigation MDL-1551 IN RE: Reciprocal of America (ROA) Sales Practices Litigation	983 1 5 2 8 2 6 34,383 8 14 4 21 130 4 18 1 61 20 11 7 539 3 290 19 6 380 6 6 15	20,156 3,085 5 34 10 20 6 112,229 14 15 4 21 130 4 18 9 63 20 11 8 541 3 292 28 6 388 6 11 15
PAM	D.J. Thomas I. Vanaskie		11	11
PAW	D.J. Gary L. Lancaster		7	8
RI	C.J. Mary M. Lisi		539	541
SC	Sr.J. C. Weston Houck C.J. David C. Norton		3 290	3 292
TNE	C.J. Curtis L. Collier D.J. J. Ronnie Greer		19 6	28 6
TNM	C.J. Todd J. Campbell Sr.J. John T. Nixon D.J. Aleta A. Trauger		380 6 6	388 6 11
TNW	D.J. J. Daniel Breen		15	15

Dist.	JUDGE	LITIGATION	Actual Number of Settling Judgments	Total Number of Settlements
TXE	D.J. Leonard E. Davis D.J. T. John Ward	MDL-1512 IN RE: Electronic Data Systems Corp. Securities & "ERISA" Litigation	4	29
		MDL-1530 IN RE: Fleming Companies Inc. Securities & Derivative Litigation	10	22
TXN	Sr.J. A. Joe Fish D.J. Terry R. Means	MDL-1578 IN RE: UFCI "Association-Group" Insurance Litigation	2	28
		MDL-1875 IN RE: RadioShack Corp. "ERISA" Litigation	4	4
TXS	D.J. Vanessa D. Gilmore D.J. Melinda Harmon D.J. Lynn N. Hughes D.J. Janis Graham Jack D.J. Sim Lake	MDL-1646 IN RE: Testmasters Trademark Litigation	1	6
		MDL-1446 IN RE: Enron Corp. Securities, Derivative & "ERISA" Litigation	110	196
		MDL-1609 IN RE: Service Corporation International Securities Litigation	1	4
		MDL-1810 IN RE: MERSCORP Inc., et al., Real Estate Settlement Procedures Act (RESPA) Litigation	13	30
		MDL-1886 IN RE: Refined Petroleum Products Antitrust Litigation	6	6
UT	D.J. Dale A. Kimball	MDL-1546 IN RE: Medical Waste Services Antitrust Litigation	1	8
VAE	D.J. Leonie M. Brinkema	MDL-1705 IN RE: Xybernaut Corp. Securities Litigation	9	10
WAW	Sr.J. John C. Coughenour D.J. Marsha J. Pechman D.J. Barbara Jacobs Rothstein	MDL-1896 IN RE: General Motors Corp. Speedometer Products Liability Litigation	3	3
		MDL-1919 IN RE: Washington Mutual, Inc., Securities, Derivative & "ERISA" Litigation	15	15
		MDL-1407 IN RE: Phenylpropanolamine (PPA) Products Liability Litigation	199	3,376
WY	C.J. William F. Downes	MDL-1293 IN RE: Natural Gas Royalties Qui Tam Litigation	74	83

Exhibit F

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

RONNIE PHILLIPS, et al.,)	
)	
Plaintiffs,)	
)	
vs.)	CIVIL NO. 06-412-GPM
)	
SEARS ROEBUCK & COMPANY, et al.,)	
)	
Defendants.)	

MEMORANDUM AND ORDER

MURPHY, District Judge:

This is “a nightmare of a class action.” *Smith v. Sprint Communications Co., L.P.*, 387 F.3d 612, 613 (7th Cir. 2004).

BACKGROUND

Ninety-seven plaintiffs seek recovery from ten defendants engaged in the manufacture and distribution of lawnmowers. They claim defendants misrepresented the horsepower produced by the lawnmowers and conspired with each other to deceive consumers. The third amended class action complaint (*see* Doc. 10, Exhibits 2-9) asserts federal claims under the Racketeer Influenced and Corrupt Organizations Act (“RICO”), 18 U.S.C. §§ 1961-1968, together with statutory and common-law claims under the laws of forty-four states. Plaintiffs also seek certification of the RICO claims on behalf of a nationwide class of purchasers who, from January 1, 1994, to the present, purchased lawnmowers manufactured or distributed by defendants containing gas combustible engines having up to 30 horsepower, as well as certification of “subclasses” of such purchasers under the state laws of forty-four states.

Jurisdiction is asserted on the basis of 28 U.S.C. § 1331 and 28 U.S.C. § 1332, as amended by the Class Action Fairness Act of 2005, Pub. L. No. 109-2, 119 Stat. 4 (codified in scattered sections of 28 U.S.C.). For the following reasons, the RICO claims asserted in the third amended complaint are dismissed, as well as all state-law claims, other than those arising under Illinois law. The motion to approve a class wide settlement between plaintiffs and defendant MTD Products, Inc. ("MTD") is also denied.

ANALYSIS

1. Motions to Dismiss.

In evaluating dismissal under Rule 12(b)(6) of the Federal Rules of Civil Procedure, a court accepts all well-pleaded allegations in a plaintiff's complaint as true. *See Cleveland v. Rotman*, 297 F.3d 569, 571 (7th Cir. 2002). The purpose of a Rule 12(b)(6) motion is to test the legal sufficiency of the allegations of a complaint, not to determine the merits of a case. *See Gibson v. City of Chicago*, 910 F.2d 1510, 1520 (7th Cir. 1990). "While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic recitation of a cause of action's elements will not do." *Bell Atl. Corp. v. Twombly*, 127 S. Ct. 1955, 1964-65 (2007) (internal citations omitted). "Factual allegations must be enough to raise a right to relief above the speculative level . . . on the assumption that all of the complaint's allegations are true." *Id.* (internal citations omitted).

Turning first to the matter of the legal sufficiency of plaintiffs' RICO claims, 18 U.S.C. § 1962 provides, in pertinent part, "It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign

commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt." 18 U.S.C. § 1962(c). "To state a claim under § 1962(c), a RICO plaintiff must show the '(1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity.'" *Richmond v. Nationwide Cassel L.P.*, 52 F.3d 640, 644 (7th Cir. 1995) (quoting *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 496 (1985)). See also *LaSalle Bank Lake View v. Seguban*, 54 F.3d 387, 393 (7th Cir. 1995); *McDonald v. Schencker*, 18 F.3d 491, 494 (7th Cir. 1994). An "enterprise" for RICO purposes means "any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity." 18 U.S.C. § 1961(4). A "pattern of racketeering activity" means "at least two acts of racketeering activity, one of which occurred after the effective date of this chapter and the last of which occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity." 18 U.S.C. § 1961(5). "Racketeering activity" means certain acts that are chargeable and punishable as felonies under state law or that are indictable under specific federal criminal statutes, as set out in an exclusive list in RICO's definitions, see 18 U.S.C. § 1961(1).

In general, "allegations of fraud in a civil RICO complaint are subject to the heightened pleading standard of [Federal Rule of Civil Procedure] 9(b), which requires a plaintiff to plead all averments of fraud with particularity." *Slaney v. International Amateur Athletic Found.*, 244 F.3d 580, 597 (7th Cir. 2001). "Accordingly, a RICO plaintiff must, at a minimum, describe the two predicate acts of fraud with some specificity and state the time, place, and content of the alleged false representations, the method by which the misrepresentations were communicated, and the identities of the parties to those misrepresentations." *Id.* "Moreover, in a multiple defendant case,

Rule 9(b) requires a RICO plaintiff to plead sufficient facts to notify each defendant of his alleged participation in the scheme.” *Goren v. New Vision Int’l, Inc.*, 156 F.3d 721, 726 (7th Cir. 1998). *See also Sears v. Likens*, 912 F.2d 889, 893 (7th Cir. 1990) (dismissing RICO claim for “lump[ing] all the defendants together” and failing to specify “who was involved in what activity”).

The Seventh Circuit holds that “[a] RICO complaint must identify the enterprise.” *Richmond*, 52 F.3d at 645. “While a RICO enterprise can be formal or informal, some type of organizational structure is required.” *Stachon v. United Consumers Club, Inc.*, 229 F.3d 673, 675 (7th Cir. 2000). *See also Richmond*, 52 F.3d at 645 (“The hallmark of an enterprise is a structure.”). More specifically, a RICO enterprise must have “an ongoing ‘structure’ of persons associated through time, joined in purpose, and organized in a manner amenable to hierarchical or consensual decision making,” with “goals separate from the predicate acts themselves.” *Stachon*, 229 F.3d at 675 (internal citations omitted). Although an enterprise can be an informal association-in-fact, “[t]he hallmark of an enterprise is structure,” and the goals of the enterprise must be separate from the predicate acts themselves. *Richmond*, 52 F.3d at 645 (quotation omitted). *See also Stachon*, 229 F.3d at 676 (noting that plaintiffs cannot establish structure by explaining what an enterprise supposedly does). An association-in-fact enterprise requires continuity and the differentiation of roles, as well as a common purpose of engaging in a course of conduct. *See Richmond*, 52 F.3d at 645. *See also Baker v. IBP, Inc.*, 357 F.3d 685, 691 (7th Cir. 2004) (noting that a common purpose is an “essential ingredient” of any association-in-fact enterprise).

A RICO enterprise must consist of more than a group of people who get together to commit a pattern of racketeering activity. *See Richmond*, 52 F.3d at 644. The enterprise must be “distinct, separate, and apart from a pattern of racketeering activity: although a pattern of racketeering activity

may be the means through which the enterprise interacts with society, it is not itself the enterprise, for an enterprise is defined by what it is, not what it does.” *Jennings v. Emry*, 910 F.2d 1434, 1440 (7th Cir. 1990). Also, in this Circuit, to establish statutory distinctness, plaintiffs must establish that each RICO person actively participated or knowingly acquiesced in the alleged scheme, or unwittingly permitted legitimate business operations to become a conduit of criminal activity. Bare legal and factual distinctness is insufficient. A plaintiff must prove the role played by the legally distinct person was non-incidental to bringing about (or concealing) a pattern of racketeering activity.

“The prototypical RICO case is one in which a person bent on criminal activity seizes control of a previously legitimate firm and uses the firm’s resources, contacts, facilities, and appearance of legitimacy to perpetrate more, and less easily discovered, criminal acts than he could do in his own person, that is, without channeling his criminal activities through the enterprise that he has taken over.” *Fitzgerald v. Chrysler Corp.*, 116 F.3d 225, 227 (7th Cir. 1997) (citations omitted). “The [RICO person] must be shown to use its agents or affiliates in a way that bears at least a family resemblance to the paradigmatic RICO case in which a criminal obtains control of a legitimate (or legitimate-appearing) firm and uses the firm as the instrument of his criminality.” *Emery v. American Gen. Fin., Inc.*, 134 F.3d 1321, 1324 (7th Cir. 1998).

Here, the plaintiffs have alleged enough to conclusively take their case outside of the paradigm. It is impossible to imagine that the enterprises as alleged wrested control of the long established legitimate businesses for the purpose alleged. The businesses could easily have accomplished what is alleged absent the associations-in-fact, and the latter by no means controlled

the former. So what is left is an alleged a conspiracy to commit fraud. The allegations are also technically insufficient.

Plaintiffs have identified four separate association-in-fact enterprises: 1) The OPEI Enterprise: "The OPEI Enterprise is an association-in-fact consisting of defendants Honda, Briggs & Stratton, Deere, Electrolux, Kawasaki, Kohler, Tecumseh, MTD and Toro...." Complt., ¶243; 2) The PLTF Enterprise: "The Power Labeling Task Force Enterprise is an association-in-fact consisting of defendants Honda, Briggs & Stratton, Deere, Electrolux, Kawasaki, Kohler, Tecumseh, MTD and Toro...." Complt., ¶248; 3) The Eagle Group/SAE Enterprise: plaintiffs allege that The Eagle Group/SAE Enterprise is a RICO "is an association-in-fact consisting of defendants Briggs & Stratton, Kohler and Tecumseh." Complt., ¶259; and 4) The Craftsman Exclusive Enterprise: "The Craftsman Exclusive Enterprise is an association-in-fact consisting of defendants Briggs & Stratton, Kohler, Electrolux and Sears." Complt., ¶253.

The sum total of the allegations involving the OPEI association-in-fact enterprise are that: (1) its members include nine of the ten defendants (and an unknown number of unnamed others); (2) these defendants are part of an "ongoing and continuing organization"; (3) they supposedly have the "common purpose of deceiving consumers"; and (4) they have overstated horsepower, concealed the same, used the third-party Outdoor Power Equipment Institute to amend the Society of Automotive Engineers' ("SAE") horsepower testing standards, and concealed that too. This does not make an "enterprise" under RICO.

Plaintiffs also allege that the same nine defendants (and unknown others) found in the OPEI enterprise created the Power Labeling Task Force ("PLTF") association-in-fact. But they fail to

allege even the statutory minimum of two predicate acts of racketeering for the Craftsman Exclusive enterprise and the SAE enterprise. *See* 18 U.S.C. § 1961(5).

With respect to the Craftsman Exclusive enterprise, the plaintiffs allege that on April 9, 2002, defendant Sears “transmitted via the interstate wires . . . [a] press release . . . to the consuming public at large.” (Complt. ¶ 264(h).) The only other allegation of misconduct in support of the Craftsman Exclusive enterprise “pattern” is that *this same press release* “is currently transmitted continuously to consumers via Sears website.” (*Id.* ¶ 264(I).) Because plaintiffs cannot “double-count” conduct to fulfill the predicate act requirement, this alleged pattern fails to meet even the minimum requirements of § 1961(5).

The claim that the SAE enterprise constituted an association-in-fact must be dismissed for the same reasons. Plaintiffs fail to identify an enterprise -- that is, they fail to allege that the association-in-fact has a structure apart from the conspiracy itself. *Bachman v. Bear, Stearns, & Co.*, 178 F.3d 930, 932 (7th Cir. 1999); *Jennings*, 910 F.2d at 1441. Likewise, there is no explanation as to the roles of each of the three engine manufacturers in this “SAE enterprise,” or the requisite decision making structure. *See e.g. Jennings*, 91 F.2d at 1440; *Richmond*, 52 F.3d at 645. These deficiencies are fatal.

Plaintiffs allege that (1) the members of the PLTF enterprise participated in two conference calls in May 2004 (*see* Complt. (¶¶ 264(l),(p))), and that (2) a third party (the Engine Manufacturers’ Association) sent a series of correspondence to the members. (*See* Complt. (¶¶ 264(d), (k), (m)-(o), (q)-(s).) The correspondence included meeting agenda, meeting minutes, and schedules of meetings connected to the two conference calls or to one of two alleged face-to-face meetings of the PLTF

enterprise. *Id.* The in-person meetings occurred on April 20 and June 2, 2004. (Complt. ¶¶ 264(g) &(k).)

All of these alleged Conspiracy Acts concerning the PLTF enterprise occurred *over little more than a one month time period*, from April 20, 2004, until June 4, 2004. *Id.* To establish the pattern requirement of a RICO claim, a plaintiff must show that defendant committed at least two predicate acts of racketeering within a ten-year period. 18 U.S.C. § 1961(5); *Vicom, Inc. v. Harbridge Merchant Serv., Inc.*, 20 F.3d 771, 779 (7th Cir. 1994). Because the RICO statute was enacted out of concern for long-term criminal conduct, rather than sporadic fraudulent acts, a RICO plaintiff “must show that the racketeering predicates are related, *and* that they amount to or pose a threat of continued criminal activity.” *Vicom*, 20 F.3d at 779 (emphasis in original) (quoting *H.J., Inc. v. Northwestern Bell Tel. Co.*, 492 U.S. 229, 239 (1989)). The relationship part of this test requires that the predicate acts be “committed somewhat closely in time to one another, involve the same victim, or involve the same type of misconduct.” *Vicom*, 20 F.3d at 779 (quoting *Morgan v. Bank of Waukegan*, 804 F.2d 970, 975 (7th Cir.1986)). The continuity portion of the test is both a closed-ended and open-ended concept, “referring either to a closed period of repeated conduct, or to past conduct that by its nature projects into the future with a threat of repetition.” *Vicom*, 20 F.3d at 779 (quoting *H.J., Inc.*, 492 U.S. at 241).

In contrast to closed-ended continuity, a plaintiff may establish open-ended continuity regardless of the duration of the conduct. *Vicom*, 20 F.3d at 782. Open-ended continuity is present when “(1) ‘a specific threat of repetition’ exists, (2) ‘the predicates are a regular way of conducting [an] ongoing legitimate business,’ or (3) ‘the predicates can be attributed to a defendant operating

as part of a long-term association that exists for criminal purposes.” *Id.* (quoting *H.J., Inc.*, 492 U.S. at 242-43).

Plaintiffs fail to allege open-ended continuity. “[S]chemes which have a clear and terminable goal have a natural ending point [and] cannot support a finding of any specific threat of continuity that would constitute open-ended continuity.” *Vicom*, 20 F.3d at 782. Here, the alleged goal of the PLTF, to amend the SAE J1940 horsepower labeling standard, is alleged to have been accomplished. (Complt. ¶ 148.) Because the plaintiffs have not alleged any predicate acts within the past two years and have pled no facts to support any ongoing criminal threat, they cannot establish open-ended continuity either.

In order to demonstrate closed-ended continuity, a plaintiff must show that the related predicate acts occurred over a substantial period of time. *Id.* To this end, courts consider: (1) the length of time over which the predicate acts were committed; (2) the number and variety of predicate acts; (3) the number of victims; (4) the presence of separate schemes; and (5) the occurrence of distinct injuries. *Id.* at 780 (quoting *Morgan*, 804 F.2d at 975); *Corley v. Rosewood Care Ctr., Inc. of Peoria*, 142 F.3d 1041, 1049 (7th Cir.1998). The courts apply these factors “with an eye toward achieving a natural and commonsense result, recognizing that Congress was concerned in RICO with long-term criminal conduct.” *Vicom*, 20 F.3d at 780 (internal quotation marks omitted).

The first factor, duration, “is perhaps the closest thing we have to a bright-line continuity test....” *Midwest Grinding Co., Inc. v. Spitz*, 976 F.2d 1016, 1024 (7th Cir.1992). In the instant case, the alleged enterprise involved a single scheme which spanned only eight months (March 2003 to November 2003).

In *Midwest Grinding*, while the Seventh Circuit acknowledged that it had not established a *per se* duration requirement, it held that a time frame of less than nine months did not satisfy the durational aspect of closed-ended continuity, citing an expansive number of Seventh Circuit cases where a duration of less than two years was insufficient to establish closed-ended continuity. *Id.* (collecting cases). The Seventh Circuit summarized the matter in *Uni Quality, Inc. v. Infotronx, Inc.*, 974 F.2d 918, 922 (7th Cir.1992), stating that an eight-month, single victim, single scheme RICO claim does not constitute a pattern. The plaintiffs in this case pled precisely that same type of “short-term, closed-ended fraud,” and, therefore, the most significant factor – duration – cuts against them.

Still, no single *Morgan* factor, regardless of its outcome, is necessarily dispositive. *Morgan*, 804 F.2d at 976. But four of the five factors, including the most significant (duration), militate against a finding of closed-ended continuity, and the fifth factor alone will not save the day. Accordingly, these claims are not the type of “long-term criminal conduct” Congress was concerned with when it enacted RICO, and dismissal is the “natural and commonsense result.” *See Vicom*, 20 F.3d at 779.

2. Class Certification.

The complaint asserts 177 separate state law claims against each defendant. This is not a good start and foreshadows the unlikelihood of class treatment. The Seventh Circuit has warned repeatedly against the certification of unwieldy multistate classes because the difficulties inherent in applying the laws of numerous states defeats both predominance and manageability. *See, e.g., In re Bridgestone/Firestone, Inc.*, 288 F.3d 1012, 1018-21 (7th Cir. 2002) (decertifying a nationwide class action alleging, inter alia, claims for breach of express and implied warranties: “Because these

claims must be adjudicated under the law of so many jurisdictions, a single nationwide class is not manageable.”); *Isaacs v. Sprint Corp.*, 261 F.3d 679, 681-82 (7th Cir. 2001) (class certification was inappropriate in a suit by owners of land adjacent to railroad rights-of-way against railroad companies and a long-distance telephone company that bought sub-easements from the railroads alleging that the rights-of-way belonged to the landowners; the suit involved “different conveyances by and to different parties made at different times over a period of more than a century . . . in 48 different states [and] the District of Columbia . . . which have different laws regarding the scope of easements,” so that individualized issues of law and fact predominated over any common issues); *Szabo v. Bridgeport Machines, Inc.*, 249 F.3d 672, 677-78 (7th Cir. 2001) (on interlocutory appeal, vacating and remanding for further consideration a district court’s decision to grant class certification: “A nationwide class in what is fundamentally a breach-of-warranty action, coupled with a claim of fraud, poses serious problems about choice of law, the manageability of the suit, and thus the propriety of class certification.”); *In re Rhone-Poulenc Rorer, Inc.*, 51 F.3d 1293, 1300 (7th Cir. 1995).

There is no way this Court could or should try make sense out of the welter of non-Illinois state claims pitched by the plaintiffs in this case. The Seventh Circuit has put an end to most multistate consumer class cases for the reasons stated, and this case is a poorer candidate than those cited above. The non-Illinois state claims will have to be litigated separately in local courts that are familiar with the appropriate underlying state law.

CONCLUSION

In light of the foregoing, the RICO claims are **DISMISSED with prejudice**, and all non-Illinois state claims are **DISMISSED without prejudice** to refile them in another jurisdiction. The

motion to certify a settlement class is **DENIED**, and the proposed settlement with defendant MTD is **REJECTED**. Such a settlement would provide nothing to the putative class and would foreclose the legitimate claims of class members.

Plaintiffs are granted leave to file, on or before **May 30, 2008**, a fourth amended complaint which re-pleads the Illinois claims only.

The motion by defendant MTD to dismiss its cross-claims against defendant Kohler (Doc. 195) is **GRANTED**. Said cross-claims are **DISMISSED without prejudice**.

Finally, Plaintiffs' motion for a status conference (Doc. 197) is **DENIED**. The Court will hold a status, if the parties so request, after an amended complaint is filed and defendants have filed their responsive pleadings.

IT IS SO ORDERED.

DATED: 5/8/08

s/ *G. Patrick Murphy*
G. Patrick Murphy
United States District Judge

**BEFORE THE JUDICIAL PANEL
ON MULTIDISTRICT LITIGATION**

IN RE LAWNMOWER ENGINES
HORSEPOWER MARKETING & SALES
PRACTICES LITIGATION

MDL DOCKET NO. 1971

CERTIFICATE OF SERVICE

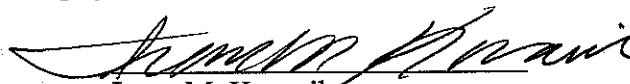
I, Irene M. Kovarik, hereby certify that on July 1, 2008, I caused copies of the following documents to be served upon the clerks of court, counsel and party listed on the attached service list, via U.S. Mail first class delivery:

Reply of Plaintiffs William Fritz, Carl Phillips, Ronnie Phillips, Marc Parrone and James Schneider in Further Support of Their Motion to Transfer Related Actions to the District of New Jersey for Coordinated Pretrial Proceedings Pursuant to 28 U.S.C. § 1407

Certificate of Service

and upon the Clerk of Court for the United States District Court for the Northern District of California via the Court's Electronic Court Filing system.

Dated: July 1, 2008



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Judicial Panel on Multidistrict Litigation - Panel Attorney Service List

Page 1

Docket: 1971 - IN RE: Lawnmower Engine Horsepower Marketing and Sales Practices Litigation

Status: Pending on / /

Transferee District: Judge:

Printed on 06/27/2008

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Note: Please refer to the report title page for complete report scope and key.

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